IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2569 OF 2003

IN

SUIT NO. 2787 OF 2003

Gopal Das Jagat Ram Pvt.Ltd. .. Plaintiff

versus

Mr.Meghraj Goyal & Anr. .. Defendants

...

Mr.Milind Vasudeo i/b Kumana & Co. for the plaintiff.

Mr.S.S. Dube for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 11th February 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The suit property originally belonged to a partnership firm of which the plaintiff and the defendant no.1 along with others were partners. By a

deed of dissolution dated 31st March 1978 (Exhibit-A to the plaint) the partnership was dissolved and all the assets of the partnership firm including the movable and immovable properties were taken over by the plaintiff. Clause no.8 of the deed of dissolution provides that plaintiff had taken over the entire business of the firm including movable and immovable assets. Thus, the plaintiff became an owner of the suit property by a deed of dissolution dated 31st March 1978, which is signed by the defendant and all the partners. The defendant no.1 is a shareholder and a member of the plaintiff company along with other family members. Despite the plaintiff having become the owner of the suit property, the defendant no.1 continued in possession of a part of the suit property. The plaintiff has therefore filed this suit for the purpose of possession of the suit property.

3. The defendant no.1 submits that he is in adverse possession of the suit property. For the purpose of claiming an adverse possession, the defendant no.1 must first admit the title of the plaintiff and then claim an hostile title by way of adverse possession. In paragraph no.7 of the

affidavit in reply, the defendant no.1 has stated that the plaintiff company never became the owner of the property with effect from 1st April 1978. The defendant no.1 has never admitted the title of the plaintiff company. Thus, there is no question of defendant no.1 claiming possession hostile or adverse to the plaintiff. The claim of defendant no.1 of ownership by adverse possession has no merit.

4. It was next contended by the learned counsel for the defendant no.1 that the deed of dissolution dated 1st April 1978 was not acted upon. The defendant no.1 has not denied the execution of the deed of dissolution. The mere fact that the defendant no.1 was not evicted in pursance of the deed of dissolution dated 1st April 1978 does not by itself show that the other conditions of the deed of dissolution were not acted upon. It is the case of the defendant no.1 that after 1st April 1978 that the business of the erstwhile firm is being carried on by the plantiff. In the circumstances, that the deed of dissolution was acted upon. This contention of the defendant also has no merit.

5. In any event, since the plaintiff has prima

facie become the owner of the suit property, he is entitled to the protection of the suit property and restrain the defendant no.1 from transferring and/or creating third party interests in respect of the suit property. An ad-interim relief to that effect has already been granted by this Court by an order dated 15th September 2003. I see no reason to vary or modify the said ad-interim relief. Ad-interim relief in terms of prayer clause (b) of the motion is therefore, confirmed.

6. The learned counsel for the plaintiff prays for appointment of a receiver of the property in terms of prayer clause (a). The defendant is in possession of the suit property for long and even after the dissolution of the partnership firm in the year 1978. It is not shown by the plaintiff that it has a present right to dispossess the defendant during the course of the trial. Hence, in view of the provisions of sub rule (2) of Rule 1 of Order 40 of the Code of Civil Procedure, the plaintiff is not entitled for an appointment of a receiver. Hence, prayer for appointment of a receiver is rejected.

7. Motion is disposed of in the aforesaid terms.

D.G. KARNIK, J